



Comptroller General  
of the United States

Washington, D.C. 20548

1040274

## Decision

**Matter of:** Advanced Resources International, Inc.--  
Reconsideration

**File:** B-249679.2

**Date:** April 29, 1993

Paul J. Seidman, Esq., and Robert D. Banfield, Esq., Seidman & Associates, P.C., for the protester.  
Ronald E. Cone, Department of Energy, for the agency.  
Jennifer Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Request for reconsideration of prior decision denying protest is denied where protester fails to show that decision contained errors of law or fact or failed to consider relevant information.
2. Certificate of competency referral is not required prior to rejection of a small business proposal on the basis of responsibility-related factors under a proper comparative technical evaluation.

### DECISION

Advanced Resources International, Inc. (ARI) requests reconsideration of our decision, Advanced Resources Int'l, Inc., B-249679, Nov. 18, 1992, 92-2 CPD ¶ 357, denying its protest of the rejection of its proposal under Department of Energy request for proposals No. DE-RP01-92FE62467 for technical support services. In its protest, ARI complained that Energy had misevaluated its proposal, and that the agency should not have rejected its offer without referring the matter to the Small Business Administration (SBA) for consideration under certificate of competency procedures. We found that the record supported the agency's evaluation of ARI's proposal and that referral to SBA was not required. In its request for reconsideration, the protester contends that our decision failed to address one of its principal arguments concerning referral to SBA.

We deny the request for reconsideration.

To obtain reversal or modification of a decision, the requesting party must convincingly show that our prior decision contained either errors of law or fact or that relevant information was not considered. Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1992); Gracon Corp.--Recon., B-236603.2, May 24, 1990, 90-1 CPD ¶ 496. ARI has not made such a showing here.

In commenting on the agency report filed in response to its protest, ARI argued that the agency should have referred the rejection of its proposal to SBA because the technical evaluators determined the proposal to be unacceptable based on deficiencies in personnel and corporate experience, both of which relate to responsibility. We held that it was permissible for the agency to use traditional responsibility criteria as technical evaluation factors where the agency's needs warranted a comparative evaluation of proposals in those areas, Sanford and Sons Co., 67 Comp. Gen. 612 (1988), 88-2 CPD ¶ 266, and that a comparative assessment of personnel experience was clearly warranted in this instance since the agency was contracting for technical support services.

In its request for reconsideration, the protester contends that our decision failed to address its argument that proposals were not in fact comparatively evaluated on the basis of responsibility criteria here since these criteria were used to reject both proposals rather than choose between them. According to the protester, "comparative evaluation" clearly implies that at least one of the proposals being compared will be selected for further consideration.

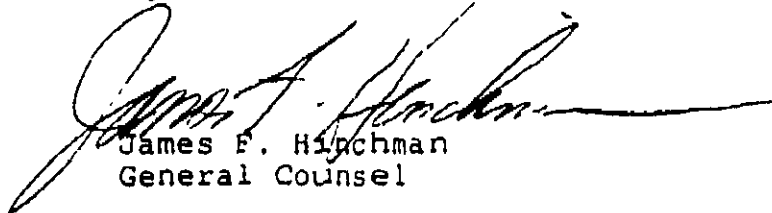
We disagree. A comparative evaluation does not necessarily imply that one or more proposals will be selected for further consideration; instead, it implies merely that proposals will be rated on a scale, as opposed to on a pass/fail basis. Thus, it is possible for all proposals under consideration to be rated unacceptable and rejected on the basis of responsibility criteria used as technical evaluation factors.

The protester argues that to permit an agency to reject a small business proposal solely on the basis of responsibility factors without a referral to the SBA is contrary to Congressional intent and defeats the purpose of the certificate of competency (COC) legislation.

We recognize that under the Small Business Act, 15 U.S.C. § 637(b)(7) (1988), the SBA has conclusive authority to determine the responsibility of a small business concern, and that an agency may not deprive a small business offeror of its right to pursue a COC by in effect determining it nonresponsible under the guise of a technical evaluation.

Clegg Indus., Inc., 70 Comp. Gen. 680 (1991), 91-2 CPD ¶ 145. At the same time, however, we have long recognized that traditional responsibility factors may be used for the comparative evaluation of proposals in relevant areas, Design Concepts, Inc., B-184754, Dec. 24, 1975, 75-2 CPD ¶ 410, and that where a proposal is determined to be deficient pursuant to such an evaluation, the matter is one of technical unacceptability not requiring referral to the SBA. Aerospace Design, Inc., B-247793, July 9, 1992, 92-2 CPD ¶ 11. The Congress has specifically recognized that responsibility-related factors, such as management capability and prior experience of the offeror, are appropriate considerations in assessing the quality of proposals. See 10 U.S.C. § 2305(a)(3) (Supp. III 1991); see also Federal Acquisition Regulation § 15.605(b). Since proposal evaluation and contract awards are to be made by the procuring agencies based "solely on the factors specified in the solicitation," 10 U.S.C. § 2305(b)(1) (1988); 41 U.S.C. § 253b(a), (c) (1988), it seems clear that the rejection of a small business proposal on the basis of responsibility-related factors under a proper comparative technical evaluation is not intended to be subject to the COC process.

The request for reconsideration is denied.

  
James F. Hinchman  
General Counsel